In the High Court of Uttaranchal, at Nainital.

(1) W.P. No. 149/2004 (S/B)
Jagdish Chandra Singh Bora … Petitioner.
Versus
State of Uttaranchal and another … Respondents.

(2) W.P. No. 44/2004 (S/B)
Taj Bahadur Singh … Petitioner.
Vs.
State of U.P. and others … Respondents.

(3) W.P. No. 129/2004 (S/B)
Subhash Chandra and others … Petitioners.
Vs.
State of Uttaranchal and others … Respondents.

(4) W.P. No. 132/2004 (S/B)
Pramod Chandra and six others … Petitioners.
Versus
State of Uttaranchal and others … Respondents.

(5) W.P. No. 135/2004 (S/B)
Virendra Singh Mehta … Petitioner.
Versus
State of Uttaranchal & others … Respondents.

(6) W.P. No. 136/2004 (S/B)
Dinesh Chand Singh and others … Petitioners.
Versus
State of Uttaranchal and others … Respondents.

(7) W.P. No. 137/2004 (S/B)
Nishant Dhyani … Petitioner.
Versus
State of Uttaranchal and others … Respondents.

(8) W.P. No. 147/2004 (S/B)
Manish Naithani and others … Petitioners.
Versus
State of Uttaranchal and another … Respondents.

(9) W.P. No. 148/2004 (S/B)
Kailash Chandra and others … Petitioners.
Versus
State of Uttaranchal and others … Respondents.

(10) W.P. No. 159/2004 (S/B)
Piyush Sinha … Petitioner.
Versus
State of Uttaranchal and others … Respondents.

(11) W.P. No. 162/2004 (S/B)
Dharmendra Kumar Sharma & another … Petitioners.
Versus
State of Uttaranchal and others … Respondents.

(12) W.P. No. 169/2004 (S/B)
Dinesh Dhawan … Petitioner.
Versus
State of Uttaranchal & others … Respondents.

(13) W.P. No. 172/2004 (S/B)
Mohd. Islam Khan … Petitioner.
Versus
State of Uttaranchal & others … Respondents.

(14) W.P. No. 186/2004 (S/B)
Manish Chauhan … Petitioner.
Versus
State of Uttaranchal & others … Respondents.

(15) W.P. No. 197/2004 (S/B)
Sheshraj Singh … Petitioner.
Versus
State of Uttaranchal & others … Respondents.

(16) W.P. No. 255/2004 (S/B)
Anil Kumar … Petitioner.
Versus
State of Uttaranchal and others … Respondents.

(17) W.P. No. 300/2004 (S/B)
Bhupesh Gusain … Petitioner.
Versus
State of Uttaranchal and another … Respondents.

(18) W.P. No. 302/2004 (S/B)
Thakur Singh Bhandari … Petitioner.
Versus
State of Uttaranchal & others … Respondents.

(19) W.P. No. 352/2004 (S/B)
Surendra Chandra Pant … Petitioner.
Versus
State of Uttaranchal and others … Respondents.

Sri Alok Singh, learned Senior Advocate, Sri Manoj Tiwari,
Sri S.N. Babulkar, learned Senior Advocate, Sri Tumul Nainwal,
Sri Anil Bisht, Sri T.A. Khan, Sri P.C. Maulekhi, Sri A. Vashist,
Sri Alok Mehra, Sri Vijay Bhatt, Sri G.S. Negi, Sri J.S. Virk,
learned counsel for the petitioners.
Sri U.K. Uniyal, learned Addl. G.A. for the State.
Sri B.D. Kandpal learned S.C. for Public Service Commission.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 2nd March, 2006

By means of these writ petitions, the petitioners have challenged the selection made by the State of Uttaranchal for the posts of Junior Engineers in various Government departments.

2- The brief facts giving rise to the aforesaid writ petitions are that the competitive examination for the posts of Junior Engineers was held by I.I.T., Roorkee and the interview was conducted by the Public Service Commission, Uttarnchal. All the petitioners are trained apprentices and in view of the judgment of the Apex Court in the case of **U.P. S.R.T.C. versus U.P. Pariwahan Nigam Shikshukhs Brejgaar Sangh and others** reported in **(1995)2 S.C.C. -1** directions were issued, which read as under:-

A. Other things being equal, a trained apprentice should be given preference over direct recruits.

B. For this a trainee would not be required to get his name sponsored by any employment exchange. The decision of this court in Union of India vs. V.N. Hargopal would permit this.

C. If age bar would come in the way of the trainee, the same would be relaxed in accordance with what is stated in this regard, if any in the service Rules be silent on this aspect, relaxation to the extent of the period of which the apprentice had undergone training would be given.

D. The Training Institute concerned would maintain a list of the persons trained year-wise. The persons trained would be treated as senior to the persons trained later. In between trained apprentices, preference shall be given to those who are senior.

3- Learned counsel for the parties have drawn our attention towards the judgment dated 14-01-2004 rendered by learned Single Judge of this Court, in a similarly situated writ petition No. 22(M/B) of 2004 Subhash Chandra versus State of Uttaranchal and another. Perusal of the judgment of learned Single Judge, reveals

that the writ petition was disposed with a direction to the respondents to decide the representation of the petitioner within six weeks and the points in issue were not decided, hence the judgment has no relevance to the facts of the present writ petitions.

4- The learned counsel for the petitioners submitted that the Rules known as 'Uttaranchal Subordinate Service (Emergency Direct Recruitment) Rules, 2001'.were amended by the Uttaranchal Government and these Rules were called 'Uttaranchal Subordinate Service [Emergency Direct Recruitment) First Amendment)] Rules 2003' in which a provision was made for 10 bonus marks to the trained apprentices who have completed the period of apprenticeship in the concerned departments. The relevant portion of the Rules reads as under:-

उत्तराचंल शासन
कार्मिक विभाग
अधिसूचना
प्रकीर्ण
31 जुलाई 2003 ई0

संख्या 1097/एक –2 2003 संविधान के अनुच्छेद 309 परन्तुक व्दारा प्रदत्त शक्ति का प्रयोग करके विभिन्न अभियन्त्रण के विभागीय नियमावलियों में अवर अभियन्ताओं की सीधी भर्ती की प्रक्रिया एवं आयु सम्बन्धी प्रावधानों और उस बिषय पर समस्त वर्तमान नियमों एवं आदेशों का अतिक्रमण करके राज्यपाल निम्नलिखित नियमावली बनाते है–

उत्तराचंल अधीनस्थ अभियन्त्रण सेवा (आपातकालीन सीधी भर्ती) (प्रथम संशोधन) नियमावली 2003

1. संक्षिप्त नाम, प्रारम्भ और विस्तारः–

(1) यह नियमावली उत्तराचंल अधीनस्थ अभियन्त्रण सेवा (आपातकालीन सीधी भर्ती) (प्रथम संशोधन) नियमावली,2003 कही जायेगी।

(2) यह तुरन्त प्रबृत होगी।

(3) नियम 5 (4) का प्रतिस्थापन

(4) नियमावली राज्य सरकार के अधीन उत्तराचंल अधीनस्थ अयिन्त्रण सेवा (आपातकालीन सीधी भर्ती) नियमावली 2001 में निम्नलिखित स्ताम्भ–1 में दिये गये वर्तमान नियम – 5 (4) के स्थान पर स्ताम्भ–2 में दिया गया नियम प्रतिस्थापित कर दिया जायेगा–

स्तम्भ –1 बर्तमान नियम	स्तम्भ–2 एतद्द्वारा प्रतिस्थापित नियम
5(4) लिखित परीक्षा में प्राप्त अंकों की गणना साक्षात्कार में प्राप्त अंकों को जोडते हुए चयन करने के लिए की जायेगी।	5(4) चयन करने के लिए लिखित परीक्षा में प्राप्त अंकों और साक्षात्कार में प्राप्त अंकों को जोडा जायेगा। परन्तु सम्बन्धित विभाग के चयनित अभ्यर्थियों की प्रवीणता सूची बनाने के लिए ऐसे अभ्यर्थियों को जिन्होनें सम्बन्धित विभाग में प्रशिक्षुता की अवधि पूर्ण कर ली हो, चयन के लिए लिखित परीक्षा में प्राप्त अंकों एवं साक्षात्कार में प्राप्त अंकों के अतिरिक्त 10 अंक और दिये जायेगें।

5- Learned Standing Counsel Sri B.D. Kandpal appearing for the Uttaranchal Public Service Commission as well as State of Uttaranchal submitted that the the Government issued a Government Order dated 29-4-2004, whereby the weightage given by the Rules, has been withdrawn and the Public Service Commission did not give any weightage to the petitioners. The relevant portion of amendment made in the aforesaid Government Order is Clarificactory in nature and in this G.O. it has been directed that if a candidate is not an apprentice and a candidate, who is trained apprentice obtain equal marks, then the weightage for selection shall be given to the trained apprentice. The contents of the G.O. dated 29-4-2004 are as follows:

> “The matter was also agitated in the Hon’ble High Court of Uttaranchal on the ground that the persons who have completed some of the apprentice in some of the departments they may be given preference to the other direct candidate. The Hon’ble High Court of Nainital issued a direction relying upon the judgment of Apex Court that in case an apprentice and other direct employees stood on the same footing in that event preference can be given to the apprentice i.e., if both candidates apprentice as well as other direct selected candidate obtained equal marks in the

selection in that event preference should be given to the apprentice and not under any other circumstances. The Hon'ble High Court in the judgment specially stated that if both candidates stood on equal footing the preference should be given to the apprentice. The selection may be finalized only in accordance with the direction issued by the Hon'ble High Court. The Hon'ble High Court while deciding his judgment issued a direction that the matter may be decided in accordance with the judgment of the Apex Court, in the case of U.P. State Transport Corporation. The Apex Court also held that in case both stood on equal footing in that event benefits can be given to the apprentice and not under any other circumstances, so as apprentice would by entitled for preference only if obtained the equal mark with a non-apprentice candidate.

The amended Rule of the State of Uttaranchal will not apply in those case where the selection process has already started."

6- The learned Standing Counsel did not deny that the first amendment in the Uttaranchal Subordinate Service (Emergency Direct Recruitment) Rules, 2003 has been made under the provisions of Article 309 of the Constitution of India. It is well settled that the Government Order cannot override the provisions of Rules formulated under Article 309 of the Constitution of India.

7- It has been emphatically stated by the petitioners that the Uttaranchal Public Service Commission has not adhered to the Rules framed under Uttaranchal Subordinate Service (Emergency Direct Recruitment) (First Amendment) Rules, 2003 and weightage of 10 marks has not been accorded to them. In para No. 2-J of the counter affidavit filed on behalf of Public Service Commission, it has been stated that in the G.O. dated 29-04-2004 it is also mentioned that the amended Rules dated 31-7-2003 will not apply in those cases in which selection process has already been started. Thus it is not disputed that commission has not adhered to the amended Rules and has not awarded 10 marks to apprentices.

8- The first Amendment Rule 2003 was brought in compliance to the directions issued by this court in Writ Petition No. 44(S/B) of 2002 Subhash Chandra versus State of Uttaranchal and others , which reads as under:

> "In the background of what has been noted above, we state that the following would be kept in mind while dealing with the claim of the trainees to get employment after successful completion of their training.:
>
> (5)Other things being equal, a trained apprentice should be given preference over direct recruits.
>
> (6)For this a trainee would not be required to get his name sponsored by any employment exchange. The decision of this court in Union of India vs. V.N. Hargopal would permit this.
>
> (7)If age bar would come in the way of the trainee, the same would be relaxed in accordance with what is stated in this regard, if any in the service Rules be silent on this aspect, relaxation to the extent of the period of which the apprentice had undergone training would be given.
>
> (8)The Training Institute concerned would maintain a list of the persons trained year-wise. The persons trained would be treated as senior to the persons trained later. In between trained apprentices, preference shall be given to those who are senior."

9- From the perusal of the aforesaid order, it is clear that the direction was relating to same selection and in compliance of the direction of the court Rules were amended and it was incumbent upon the Public Service Commission to follow the Rules and the G.O. ought to have been read supplement in the Rules. Therefore, the selection has been held in violation of the 'Uttaranchal Subordinate Service [Emergency Direct Recruitment (First Amendment)] Rules 2003 which were framed in compliance of the directions issued by this Court based on the Apex Court judgment.

10- Therefore, all the writ petitions are allowed. The State Government and the Public Service Commission, both, are directed to give weightage of 10 bonus marks to the trained apprentice

Candidates as per the ‘Uttaranchal Subordinate Service [Emergency Direct Recruitment (First Amendment)] Rules 2003’ in the selection held by U.P.S.C. and after adding 10 marks, merit list of the selected candidates be prepared and recommended for the appointment to the Government. All the successful candidates shall be given appointment in the remaining vacancies of the Junior Engineers in the various departments of the Government and the instrumentalities of the State according to the merit list of apprentices selected in the merit list. This list shall survive for one year from the date of its publication.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

ISB